

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

EARL REYES,
Plaintiff,

v.

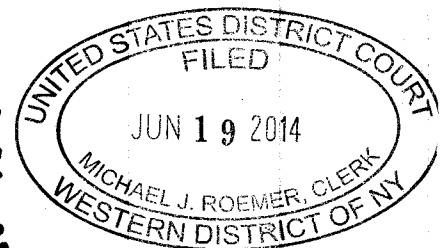
JOHN WENDERLICH, Superintendent;
AMY FARMHAM, D.S.A;
JOHN DOE, Maintenance Worker;
J. JOHN HAGN, Nurse Administrator;
J. CLEMENT, Nurse;
K. WEAVER, Nurse;
ZAWKO GOULD, Nurse;
K. WALSH, Nurse;
PRISON MEDICAL PROVIDER;
BEN OAKES, Doctor, sued in their
individual and official capacities.
Defendants.

COMPLAINT

CIVIL ACTION NO.

14CV6

Jury Trial Demanded



VERIFIED COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF

I. Introduction

1. This is a 1983 action filed by Plaintiff Earl Reyes, a state prisoner, alleging violation of his constitutional rights to protection from extreme cold and to receive medical care. Plaintiff seeks injunctive relief and money damages.

II. STATEMENT OF JURISDICTION

2. Jurisdiction of this Court is invoked ... pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States.

3. Jurisdiction of the Court is invoked ... pursuant to 28 U.S.C. § 1343(a)(3) in that this

action seeks to redress the deprivation, under color of state law, of right secured by Acts of Congress providing for equal rights of ... persons within the jurisdiction of the United States.

4. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 2201.

III. PARTIES TO THIS ACTION

5. Plaintiff Earl Reyes was confined in the Southport Correctional Facility, a state ... correctional institution, located at Pine City, New York 14871-2000, P.O. BOX 2000 from May 28, 2013 to March 28, 2014. Plaintiff is currently confined at Attica Correctional

Facility, located at 639 Exchange St. Attica, New York, 14011-0149.

6. Plaintiff Earl Reyes is, and was at all times mentioned herein, an adult citizen of the United States and a resident of the state of New York.

7. Defendant John Wenderlich was at all times relevant to this action the Superintendent of Southport Correctional Facility and was acting under color of state and federal law. As superintendent of the prison, defendant manages its day to day operations and executes its policies. D.O.D. policy provides that

every effort will be made to repair any inoperable heating equipment by October 15th of each year. He is being sued in his individual and official capacities.

8. Defendant Amy Faubus was at all times relevant to this action the Deputy Superintendent of Administration is in pertinent part responsible for overseeing the Maintenance Dept.. She is being sued in her individual and official capacities.

9. Defendant John Doe was at all times relevant to this action the Maintenance worker responsible for responding

to the 12 gallery November through Jan.

2013-14 work orders. He is being sued in his individual and official capacities.

10. Defendant Jane John Hahn was at 11 times relevant to this action the nurse administrator responsible for overseeing and supervising the medical staff in supplying medical care to prisoners at Southport. She is being sued in her individual and official capacities.

11. Defendant Jeremy Clement was at 12 times relevant to this action the nurse instructed to make medical assessments and plans for diagnosis and health

Care treatment. He is being sued in his ... individual and official capacities.

12. Defendant Kate Weaver was at all times relevant to this action the nurse instructed to make medical assessments and to make plans for diagnosis and health care treatment. She is being sued in her ... individual and official capacities.

13. Defendant Zawko Gould was at all times relevant to this action the nurse instructed to make medical assessment plans for ... diagnosis and health care treatment. She is being sued in her individual and ... official capacities.

14. Defendant Prison Medical Provider, (PMR), is a private New York Corporation which has been at all times relevant, and under contract with D.O.C. to provide medical care and services to inmates confined in S.C.E., including Earl Reyes. PMR is being sued in both capacities.

15. Defendant K. Walsch was at all times ... relevant as a nurse employed by PMR. She is being sued in her individual and official capacities.

16. Defendant Ben Oakes was at all times ... relevant as a physician employed by PMR. He is being sued in his individual and ... official capacities.

IV. EXHAUSTION OF AVAILABLE REMEDIES

17. Plaintiff exhausted his available remedies before filing this complaint.

V. FACTUAL STATEMENT

18. On or about October 20, 2013 Plaintiff and several other inmates stopped defendants Wenderlich, and Farmham to inform them that the heating system was inoperable in 12 gallery where Plaintiff was housed.

19. The defendants, Wenderlich and Farmham made observations and stated that they would send maintenance to fix the heat.

20. On or about October 25, 2013 defendant maintenance worker John Doe arrived at 12 gallery and told Plaintiff and others

that he would have to go on the roof-top in order to fix the problem, that it was very cold outside and will wait until there is warmer weather to fix it, defendant Doe then walked away.

21. On or about Oct. 28, 2013, Plaintiff and others housed in 12 gallery informed defendants Wenderlich and Farmham that according to state policy the heat is to be turned on or operational by Oct. 15 of each year.

22. Defendants did not respond and continued walking.

23. On or about Nov. 10, 2013, Plaintiff and others demanded defendants Wenderlich

and Farmham to fix the heat.

24. Defendant Wenderlich stated that it was cold outside what do you expect, then walked away.

25. Plaintiff and others repeatedly sought assistance from all staff that made rounds about the below-freezing temperatures.

26. Plaintiff and others housed in 12 gallery were referred to defendants Wenderlich, Farmham and Doe.

27. On or about December 2, 2013, Plaintiff and others filed or submitted grievances requesting that the heat be fix or in the alternative that Plaintiff and others be moved

to a gallery where the heating system was operational and at the very least to be provided with thermal underwear and extra blankets to combat the cold.

28. Upon information and belief only two inmates received responses (13 and 14 cell, on or about Dec. 13, 2013), Plaintiff received no response.

29. On or about Dec. ~~13~~²⁰, 2013, Plaintiff and others questioned Grievance Officer H. Martin in regards to the status of grievances based on the below-freezing temperatures.

30. Grievance Officer H. Martin told the

Plaintiff others that she has not received said grievances and advised Plaintiff and other inmates housed in 12 gallery to file again.

31. On or about Jan. 1st, 2014 Plaintiff and others stopped defendants Wenderlich and Farmham to request that we be provided with extra blankets, long underwear or to be moved to another gallery where the heating system was operational.

32. As to Plaintiff's claim in paragraph 31, defendant's Wenderlich and Farmham denied Plaintiff's request.

32. Upon information and belief there were at all times during the winter of 2013-14

numerous galleries with empty cells where heating systems were working.

32. On or about Jan. 20, 2014, Plaintiff and others stopped defendants Wenderlich and Farham while making rounds to inform them that the cold is too extreme it's become impossible to perform simple daily activities, and that even with all our clothes on it was still too cold.

33. Defendants Wenderlich and Farham made jokes and told Plaintiff and others that we'll make it and that the heat would probably get fixed when the weather starts warming up because maintenance

workers need to go outside and on the roof of the prison to fix it, it would be too cold for the workers to be up there, and said don't you know there are record low temperatures.

Soon after defendants Wenderlich and Farmham walked away.

34. On or about Feb 18, 2014, Plaintiff and others filed grievances complaining amongst other things about the frigid temperatures on 12 gallery, and that staff has refused to fix the heat.

35. On March 6, 2014 two maintenance workers while making observations on 12 gallery stated that the windows had poor

insulation.

36. On or about March 13, 2014 Plaintiff received a response from defendant Wunderlich stating in part that this issue has been addressed to maintenance and they are working to resolve the issue.

37. On March 20, 2014 Plaintiff appealed defendant Wunderlich's response, stating policy states every effort shall be made to repair inoperable heat systems by Oct. 15. Superintendent did not do that nor did he provide adequate clothing to combat the cold, nor did he move Plaintiff.

38. On Jan. 21, 2014, Plaintiff sent a medical kite to the Health Administrator (Vonhagin) informing her about pain and suffering from lesions on his testicles and other medical problems, he also asked her for consideration and relief in regards to the nurses non-responses to Plaintiff's sick call requests.

39. Plaintiff did not receive a response ... from said Kite.

40. On February 2, 2014, Plaintiff sent another medical kite to defendant Vonhagin complaining about amongst other things that he was being denied medical attention by most of the nursing staff including

defendants K. Weaver and K. Walsh who would not stop at plaintiff's cell to respond to his sick-call requests, and that he believes that the medical staff are playing the role of "gatekeep" in deciding which inmates receive medical attention.

41. Plaintiff again received no response back from defendant VonHagen.

42. On February 11, 2014, Plaintiff complained to nurse/defendant J. Clement of pain in his groin area and other medical problems. He also asked to see the doctor as an emergency.

43. Defendant J. Clement told Plaintiff we'll see and walked away.

44. As to paragraph 42#43 the Plaintiff's request was denied.

45. On February 12, 2014, Plaintiff stopped defendant J. Clement while making rounds and again told him that he has a medical emergency and needs to see a doctor.

46. Nurse/defendant J. Clement told Plaintiff well get to you and denied Plaintiff's request.

47. On February 14, 2014, Plaintiff requested to be seen by nursing staff via sick-call request form dated Feb 13, 2014.

48. A male nurse who's name is unknown to Plaintiff at this time, informed

Plaintiff that he was on the list to see the doctor.

49. On Feb. 18, 2014, the doctor visited 12 gallery to see other inmates and would not see the Plaintiff.

50. On Feb 19, 2014, Plaintiff submitted a grievance complaining amongst other things that he was being denied medical care at Southport Facility due to gatekeeping, and stated that he needed medical attention due to pain in groin area.

51. On Feb 26, 2014, defendants S. Clement and Gould stopped to see Plaintiff due to sick call request dated Feb. 25, 2014.

52. Plaintiff told Defendants J. Clement and
~~2.00~~

260412 that he was experiencing pain in his...

genitals and that he needs pain medication and to

see a doctor as an emergency. Plaintiff also

requested medication for his left toe which

was infected with fungus.

53. Defendant J. Clement addressed only the

Fungal issue, to state that he would not

provide Plaintiff with any medication

for it.

54. Defendant J. Clement did not document

Plaintiff's request for emergency medical

attention in Plaintiff's medical records

for Feb. 25, 2014.

55. On Feb. 26, 2014, Plaintiff requested to be seen at sick call via request form dated Feb. 25, 2014, complaining of pain in his genitals, requesting pain medication and to see the doctor as an emergency. Plaintiff also requested antibiotics for his infected left toe.

56. As to Plaintiff's request in paragraph 55, defendant J. Clement denied Plaintiff's request and did not document Plaintiff's request for emergency medical attention due to pain in his genitals.

57. On Feb. 27, 2014, Plaintiff requested to be seen at sick call via request form dated Feb. 26, 2014, to complain that he has been experiencing

pain for months and that the pain has become unbearable, Plaintiff also wrote that he needs to see the doctor as an emergency and that he is not being taken seriously, he is being ignored and as a result being denied medical attention.

58. Defendant J. Clement and Z. Gould would not stop to see Plaintiff on Feb. 27, 2014, and wrote on the medical records that they did stop alleging that Plaintiff was under the covers.

59. On Feb. 28, 2014, Plaintiff requested to be seen at sick call via request Form dated Feb. 27, 2014 that stated he has unbearable

pain, is having trouble doing daily activities and needed to see a doctor so he could at least get some pain medication. Plaintiff also stated that the pain was so severe that he sometimes passes out, so please stop don't just rush past my cell like has been done.

60. Plaintiff also requested a list of all names of the medical staff at Southport and to review his own records on the same sick call request form dated Feb. 27, 2014.

61. Defendant J. Clement did not assess or even document the Plaintiff's request completely omitting the request on his medical records except said request was somehow received

by defendant K. Weaver for the purpose of answering to the request for review of medical records, which was requested on the sick-call request form dated Feb. 27, 2014.

62. On or about March 3, 2014, Plaintiff received an endorsed response to the ... information requested on the sick call request form dated Feb. 27, 2014, by defendant K. Weaver along with the original sick-call request form solely to deny Plaintiff's request for information and discarded his medical needs.

63. On March 7, 2014, Plaintiff requested to be seen at sick call via sick call request

Form dated March 6, 2014, requesting to see the health care provider as an emergency due to pain in his genitals.

64. As to Plaintiff's request in paragraph 63 it was ignored and not even documented in his medical file.

65. On March 10, 2014, Plaintiff received a response from grievance dept., due to a grievance filed on Feb. 19, 2014 complaining about amongst other things pain in his groin and that he requested to see a doctor as an emergency, also that he was being denied medical care at Southport.

66. The grievance departments response

discarded the issue of Plaintiff's pain in groin area and addressed only one other medical concern and stated that the Plaintiff's medical concerns have been addressed.

67. On March 10, 2014, Plaintiff appeared the grievance department's determination to the Superintendent.

68. On March 11, 2014, Plaintiff request to be seen via sick call request form dated March 11, 2014, informed defendant Z. Gould that he is having pain and that his gums are swollen. Plaintiff also requested emergency medical attention and pain medication.

69. As to claim in paragraph 68, defendant 2. Gould denied Plaintiff's request for emergency ... medical attention and did not document his request for emergency medical attention.

70. On March 11, 2014, defendant 2. Gould told Plaintiff that he was on the list to see the doctor. Upon doctors arrival to A-block, Plaintiff asked the accompanying escort officer if he was on the list to see the doctor. The officer replied that he was not on the list.

71. On March 12, 2014, Plaintiff informed Counselor Klatt that he's still haven't been seen by a doctor, although,

He has requested emergency medical attention and is now experiencing pain and swelling in his gums.

72. Counselor Klatt told Plaintiff that she may be able to get Plaintiff to see a dentist.

73. Due to Counselor Klatt's assistance Plaintiff was able to see the dentist.

74. On March 12, 2014, the dentist took x-rays of Plaintiff's swollen gums were caused by a sinus infection that is spreading and not his teeth.

75. The dentist also told Plaintiff that he must request to see a doctor in order

to be sent out for a Kat-scan. The dentist also stated that surgery may be required and noted that the x-rays revealed a black cloud in the sinus area. The dentist then gave the Plaintiff one week supply of medication for infection and pain and stated that he could not fill cavities due to his infection.

76. On March 17, 2014 Plaintiff requested to be seen at sick call via sick call request form dated March 16, 2014 stating that he has sharp pain in his genitals due to bumps that have grown on them and requested to see the doctor as an emergency to at least assess the pain and cause

of said pain. Plaintiff also informed Defendant J. Clement of his sinus infection and the need to see a doctor that he needs to see him to inform that the dentist advised Plaintiff to request a Xat-scan.

17. As to the Plaintiff's claim in paragraph 76, Defendant J. Clement denied his request.

18. Plaintiff then told Defendant J. Clement that he's been complaining Ear at least a month about bleeding gums and now he has a Ear blown infection. Plaintiff also told J. Clement that he has been requesting emergency medical

attention for his genital pain for months and his condition is worsening.

79. Defendant J. Clement walked away and returned with Dr. Oaks to attend to inmates on the same gallery that Plaintiff was housed in.

80. Plaintiff then asked the escort officers as they were bringing other inmates to see the doctor if he could be seen by the doctor.

81. Escort officer then told the Plaintiff that he was not on the list and therefore could not be seen.

82. On March 19, 2014, Plaintiff requested to be seen at sick call via request form dated ... March 18, 2014, to request to see the doctor as an emergency.

83. As to claims in paragraph 82 defendant J. Clement denied Plaintiff's request.

84. Plaintiff also informed defendant J. Clement that in effect he is being put at risk and questioned him as to why Plaintiff couldn't receive pain medication or assessment.

85. Defendant J. Clement did not answer and walked off.

86. On March 20, 2014 Plaintiff requested emergency sick call via sick call request...

Form dated March 19, 2014, to request emergency medical attention due to severe pain and sinus infection, that may require surgery. Plaintiff also informed defendant Walsch, who was escorted by C.O. Miller, that he has been requesting emergency medical attention for some time and has been unsuccessful, and requested medication for fungus in his crotch area.

87. Defendant Walsch told Plaintiff that it is written down that Plaintiff refused medical attention.

88. Plaintiff told defendant Walsch that he has not denied medical care

and to the contrary has been seeking medical care.

89. Plaintiff then informed escorting officer G.O. Miller in defendant Walsh's presence that he is requesting emergency medical attention through him because the nursing staff are ignoring his requests.

90. As to Plaintiff's claim in paragraph 88 & 89 defendant Walsh denied his request.

91. At this point upon information and belief the nursing staff are conspiring together to retaliate due to institution

92 grievances that he has filed and are in fact committing fraudulent acts by documenting that Plaintiff refused medical attention.

92.
91. On March 21, 2014, Plaintiff requested to be seen at sick call via request form dated March 21, 2014, to request emergency medical attention.

93. As to Plaintiff's claim in paragraph 92, Defendant 2. Gould denied his request and did not document that Plaintiff requested emergency medical attention in his medical records.

94. On March 22, 2014, Plaintiff was seen at sick call by Defendant J. Clement

to request amongst other things emergency medical attention.

95. As to ~~the~~ Plaintiff's claim in paragraph 94 Defendant D. Clement denied his request and although medical records noted that medication was provided for fungus in scrotal area, Plaintiff never actually received it.

96. On March 24, 2014, Plaintiff was seen by defendant Ben. Oakes.

97. Plaintiff informed Defendant Ben. Oakes of pain in genitals, and sinus infection.

98. Defendant Ben Oakes noted bumps on scrotum and told Plaintiff that he does not know what he is talking about in regards to sinus

infection and that the dentist who examined x-rays also did not know anything.

99. Plaintiff requested pain medication.

100. As to Plaintiff's claim in paragraph 99 defendant Ben Oake denied his request.

CAUSES OF ACTION Count I

Plaintiff was subjected to cruel and unusual punishment in violation of the eighth amendment to the ... constitution

- 101) Plaintiff incorporates paragraphs 1 through 9 & 17-38 as they were fully stated herein.
- 102) Defendants Wenderlich, Farmham and Doe violated Plaintiff's eighth amendment right to be free from cruel and unusual punishment by failing to protect ... Plaintiff from exposure from freezing and below freezing temperatures for such a prolonged period of time as to cause severe discomfort.
- 103) Defendants Wenderlich, Farmham and Doe were deliberately indifferent to Plaintiff's basic necessities by failing to act to remedy said conditions and to be housed in a gallery with an operable heating system or provide long underwear and extra

blankets to combat the cold. Defendants had knowledge of unconstitutional conditions and of the substantial risk for serious harm. Defendants were in position to do what was reasonable to prevent exposure to said conditions and refused to do their duty.

Count II

Plaintiff was denied his constitutional right to medical care

- 104) Defendant S. Clement Failed to provide needed medical treatment, despite his knowledge of Plaintiff serious medical needs, constituted deliberate indifference to Plaintiff serious medical needs.
- 105) The refusal of defendant Ben. Jones to provide needed medical treatment for Plaintiff serious medical needs, that obviate medical attention constituted deliberate indifference to Plaintiff serious medical needs. Plaintiff suffered further injury and physical and emotional pain and injury.
- 106) Defendant Prison Medical Providers have a policy or custom disregard and

gatekeeping emergency sick call requests for medical care and fail to properly train and supervise the subordinate medical staff, allowing for continued existence of said conditions, constituting a deprivation of Plaintiff's constitutional right to medical care.

107) Defendant Vonhagen was following the policy or custom of Prison Medical Provider when she disregarded numerous kites and grievances requesting care for his serious medical need constituting a deliberate indifference to Plaintiff's serious medical needs.

108) Defendant K. Weaver was following the policy or customs of Prison Medical Providers when she disregarded Plaintiff's sick call request for medical care, failing to provide care for Plaintiff's serious medical needs, constituting a deliberate indifference to Plaintiff's serious medical needs.

109) Defendant K. Walsch failed to provide needed medical treatment, and to have doctor assess pain or provide medication, instead defendant was ...

deliberately indifferent to Plaintiff's serious medical needs.

110) Defendant Z. Gould Failed to provide needed medical attention for Plaintiff's serious medical needs constituting a deliberate indifference to Plaintiff's serious medical needs.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this Court grant the following relief:

A. Declare that defendants Wenderlich, Farmham and Doe violated Plaintiff's Eighth Amendment rights when they Failed to provide basic necessities and to protect Plaintiff from the substantial risk of serious harm.

B. Declare that defendants Vonhagen, J. Clement, K. Weaver, Z. Gould, Ben Oakes, K. Walsch and Prison Medical Provider ... violated Plaintiff's ~~an~~ Eighth Amendment right to medical care.

C. Issue an injunction requiring that defendants Prison Medical Providers

make referrals to the required specialists for needed treatment.

D. Award compensatory damages for Plaintiff's physical and emotional injuries, and punitive damages against each defendant; and

E. Grant Plaintiff such other relief as the Court determines Plaintiff is entitled to.

Earl Reyes
~~Carl Reyes~~

June 1, 2014

Attica C.F.

639 Exchange St.

Attica, N.Y. 14011-0149

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 1, 2014
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

Carl Reyes

Signature(s) of Plaintiff(s)

Revised 03/06 WDNV

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: *NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.*

1. _____
2. _____

-VS-

B. Full Name(s) of Defendant(s) *NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.*

1. _____	4. _____
2. _____	5. _____
3. _____	6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION *NOTE: To list additional plaintiffs, use this format on another sheet of paper.*

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in _____ Individual and/or _____ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
 Yes _____ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: NA

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☒

If not, give the approximate date it was resolved. NA

Disposition (check the statements which apply):

☒ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☒ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☒ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Earl Reyes,

Defendant(s): Dale Actus.

2. District Court: Southern

3. Docket Number: 10-CV-07379-RO-MHD

4. Name of District or Magistrate Judge to whom case was assigned: Michael H. Dolinger

5. The approximate date the action was filed: June 1, 2010

6. What was the disposition of the case?

Is it still pending? Yes ☒ No ☐

If not, give the approximate date it was resolved. NA

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.